

1 245. Thus, on November 4, 2009, a B. Riley report on STEC that stated it
2 was “taking down our numbers somewhat” focused on two primary concerns: the
3 first was the disclosure that EMC had “excess” ZeusIOPS inventory, and the
4 second was that “IBM, which still is expected to be the next storage customer to
5 embrace SSDs in volume . . . is not generating meaningful revenues yet—in part,
6 STEC stated, due to the fact that Big Blue is marketing the drives as an option vs.
7 coming out and leading upgrade sales efforts with SSDs.”

8 246. Thus too, on November 4, 2009, a J.P. Morgan report that cut that
9 analyst’s STEC stock price target also stated that the two issues depressing the
10 stock price were the need for “greater clarity on the EMC and IBM ramps.”

11 247. Similarly, the November 4, 2009, *Barron’s* article stated that
12 “[a]dditional pressure” on the price of STEC’s stock price was the result of the
13 report that “business has been slow as well at both IBM and Sun Microsystems.”

14 4. **Disclosure That No Other Customer Could Replace EMC**
15 **Under the EMC Agreement**

16 248. A fourth substantial cause of the November 4, 2009, stock price
17 decline was the disclosure that, contrary to the statement in STEC’s September 10,
18 2009, letter to the SEC, no other customer could replace EMC under the EMC
19 Agreement, or, more generally, purchase ZeusIOPS at volumes similar to those
20 being purchased by EMC under the Agreement. *Compare ¶¶ 169-71, supra.*
21 During the November 3, 2009, conference call, Manouch confirmed an analyst’s
22 statement that STEC’s other large customers besides EMC “aren’t selling to any
23 degree yet” and added that they were all “*a year behind*” EMC. Manouch also
24 disclosed that the customer most likely to make the next agreement similar to the
25 EMC Agreement, namely, IBM, was not anywhere close to making such an
26 agreement, that sales to IBM actually had declined during the third quarter, and
27 that IBM was still offering ZeusIOPS as a mere option rather than a standard part
28 of its systems.

1 249. Thus, a November 4, 2009, report on STEC by ThinkEquity LLC
2 downgraded STEC from “Buy” to “Hold,” while noting that, as Manouch admitted
3 during the November 3, 2009, conference call, the “other Storage OEMs [are]
4 almost a year behind EMC in adopting SSDs.”

5 250. Similarly, a November 4, 2009, B. Riley report stated it was “taking
6 down our [valuation] numbers somewhat,” after discussing the fact that IBM, was,
7 as Manouch had stated during the November 3, 2009, conference call, still
8 “expected to be the next storage customer to embrace SSDs in volume . . . but is
9 not generating meaningful revenues yet—in part, STEC stated, due to the fact that
10 Big Blue is marketing the drives as an option vs. coming out and leading upgrade
11 sales efforts with SSDs.”

12 **B. The February 23, 2010, Additional Corrective Disclosures**

13 251. In reaction to the multiple corrective disclosures made after the
14 market closed on February 23, 2010, the price of STEC common stock dropped
15 over 23% in trading on February 24, 2010, a decline of \$3.15, on extraordinary
16 volume of over 36 million shares.

17 **1. Additional Disclosure That the EMC Agreement Did Not**
18 **Represent a New Recurring Level of EMC Purchases**

19 252. One substantial cause of the February 24, 2010, stock price decline
20 was STEC’s disclosure that it did not expect “any meaningful production orders”
21 from EMC during the first half of 2010. Each of three different analysts lowered
22 their STEC stock price targets while explaining that, whereas they originally had
23 believed that the EMC Agreement represented EMC’s recurring requirements for
24 ZeusIOPS every six months, they now realized that EMC’s recurring requirements
25 were only half that much. *Compare ¶¶ 81-86, supra; see also ¶¶ 66-75.*

26 253. Thus, on February 24, 2010, Oppenheimer stated that “now that
27 EMC’s supply contract with STEC for \$120M is indicative of a full-year run rate
28 vs. half year we are . . . dropping our [price target] to \$10 from \$21.”

1 254. Similarly, on February 24, 2010, B. Riley lowered its STEC stock
2 target price from \$29 to \$16.38, while explaining that “this order was envisioned as
3 meeting six months of demand,” but “STEC’s new guidance indicates that it
4 expects EMC to take at least a whole year to work through its \$120MM July 2009
5 order for ZeusIOPS SSDs.” In a comment reflecting suspicion of STEC
6 management, the report added “[g]iven the drastic difference between actual and
7 expected end-customer demand, we have to wonder why STEC didn’t work with
8 EMC and spread shipments over a longer time period—minimizing the disruption
9 all the way around.”

10 255. Also similarly, on February 23, 2010, Deutsche Bank lowered its
11 STEC stock price target to \$10 from \$36, while stating “[w]e now see EMC
12 revenue of roughly \$35M/Q in F2H-10, which we believe has been EMC’s true
13 demand over the past few Qs.”

14 2. **Additional Disclosure That the Other OEMs Would Not Be**
15 **Increasing Their Purchases During the Second Half of 2009**

16 256. A second substantial cause of the February 24, 2010, stock price
17 decline was STEC’s disclosure that its ZeusIOPS sales to its customers other than
18 EMC during the fourth quarter of 2009, and, indeed, during the entire second half
19 of 2009, were far below their quarterly level during the first half of 2009, and were
20 not expected to recover even in the 2010 first quarter. *Compare ¶¶ 110-120,*
21 *supra; see also 152-57.*

22 257. Thus, on February 24, 2010, a Needham report on STEC stated it was
23 “[r]evising estimates lower once more” because, among other reasons, fourth
24 quarter ZeusIOPS revenue was “below our original estimate.” This meant revenue
25 from the Other OEMs—not from EMC—was below what Needham had expected,
26 because analysts had known since the third quarter what the amount of fourth
27 quarter revenues from EMC would be, because revenues from EMC for the second
28 half of 2009 had been fixed by the EMC Agreement.

1 258. Thus too, on February 24, 2010, J.P. Morgan lowered its STEC stock
2 price target to \$12.50 from \$42, after noting that STEC's 2010 first quarter revenue
3 guidance was more than \$60 million below J.P. Morgan's prior estimate. Because,
4 after STEC's November 3, 2009, disclosures, investors already knew that EMC
5 would not be purchasing as much as \$60 million in the 2010 first quarter, at least a
6 portion of J.P. Morgan's prior overestimate of STEC's 2010 first quarter revenues
7 had been an overestimate of revenues from STEC's customers other than EMC.
8 J.P. Morgan commented that "the disappearance of sustainable revenue momentum
9 up-ended our prior view" and that "[t]he flow-through effects of this reset are
10 staggering to the overall model, which is why we are downgrading to Neutral."

11 **3. Additional Disclosure That IBM Was Not Expected to**
12 **Begin Purchasing for Volume Production in the Second**
13 **Half of 2009**

14 259. A third substantial cause of the February 24, 2010, stock price decline
15 was STEC's disclosure that, not only had IBM failed to commence volume
16 production during the second half of 2009, but also, STEC had no expectation of
17 IBM commencing volume production at any specific time in the future. *Compare*
18 ¶¶ 160-68, *supra*; *see also* ¶¶ 139-40, 146, 150.

19 260. Thus, a Reuters report on STEC issued on February 24, 2010, stating
20 that "the company's shares [were] down 30 percent in extended trade" also
21 reported that "[i]ndustry watchers were anticipating an update on how customers
22 apart from EMC, like IBM Corp were ramping in terms of using STEC's products"
23 and that Manouch had disclosed that "[a]ll of the other customers are picking up
24 slowly."

25 261. The analysis presented, *supra*, regarding the Exchange Act
26 Defendants' non-cancelable inventory purchase orders shows that, one of the
27 reasons why, even at the end of 2009, IBM still was not ordering for full
28 production was that, contrary to the impression conveyed by the Prospectus, at the

1 time of the issuance of the Prospectus, the Exchange Act Defendants had no
2 expectation that IBM would transition toward ordering for volume production
3 during the second half of 2009.

4 **4. Additional Disclosure That No Other Customer Could**
5 **Replace EMC Under the EMC Agreement**

6 262. A fourth substantial cause of the February 24, 2010, stock price
7 decline was STEC's additional disclosure that none of its other customers, singly
8 or even taken together, were capable of duplicating the kind of purchasing made by
9 EMC under the EMC Agreement. *Compare ¶¶ 169-71, supra.*

10 263. Thus, in its February 23, 2010, report on STEC, Deutsche Bank stated
11 that “[i]t sounds like IBM and other customers are ramping modestly, but for now,
12 *these customers will not be enough to offset lost EMC biz.*”

13 264. Similarly, in the first sentence of its February 24, 2010, report on
14 STEC, Needham stated, “the company remains heavily levered to pulls from its
15 first and primary customer,” and in the next sentence, Needham added that “the
16 remaining customers [are] far behind in their own ramps.”

17 **5. Disclosure That the Exchange Act Defendants Inflated**
18 **STEC's 2009 Second Quarter Revenue and Revised**
19 **Revenue Guidance**

20 265. A fifth substantial reason for the February 24, 2009, decline in the
21 price of STEC's stock was STEC's issuance of revenue guidance for the 2010 first
22 quarter—\$33 million to \$35 million—that was far below investors' expectations.
23 A February 24, 2010, *Associated Press* article stated “Shares of Stec Inc. plunged
24 Wednesday after the maker of data storage devices said first-quarter revenue would
25 be as much as 53 percent lower than what Wall Street expected.” A *Barron's*
26 article by Eric Savitz also published on February 24, 2010, was titled “STEC
27 Wreck: Mass Downgrades On Rotten Guidance.” The reason for this decline was
28 that revenue for the several preceding quarters had been artificially high. Revenue

1 for the 2009 third and fourth quarters had been boosted by the one-off EMC
2 Agreement, and, as demonstrated, *supra*, revenue for the 2009 second quarter had
3 been inflated by undisclosed channel stuffing, and the generation and reporting of
4 unearned income, based on shipments to customers other than EMC.

5 See ¶¶ 90-203, *supra*.

6 266. While it has taken until now to understand the multiple reasons why
7 STEC's 2010 first quarter guidance was, to use *Barron's* term, "rotten," even at the
8 time when the guidance was issued, analysts realized that the drop in revenue was
9 caused by more than just a lack of sales to EMC, and that part of the problem was a
10 lack of credibility on the part of STEC's management.

11 267. Thus, on February 24, 2010, a J.P. Morgan report stated that "the
12 disappearance of sustainable revenue momentum up-ended our prior view that
13 STEC was *the high-growth story* in SMidCap." J.P. Morgan had labeled STEC
14 "*the high-growth story* in our coverage universe" when it had initiated coverage of
15 STEC—just one month after STEC had reported its 2009 second quarter revenue.

16 268. Also on February 24, 2010, a Thomas Weisel Partners report stated
17 that "STEC's 1Q10 revenue guidance suggests to us current SSD adoption in
18 Enterprise Storage applications is well below previous estimates," and that the
19 analyst was lowering its STEC stock price target because of "our loss of
20 confidence in STEC management."

21 269. Also on February 24, 2010, a *Barron's* article by Alexander Eule
22 stated that "[g]iven STEC's abrupt first-quarter forecast, though, it could be a
23 while before investors take the company at its word." On the same day, another
24 article in *Barron's*, this one by Eric Savitz, noted, sarcastically, that, among those
25 who now looked "prescient" were "CEO Manouch Moshayedi, and his brother,
26 president Mark Moshayedi, who last summer sold 9 million shares—at \$31
27 apiece."

28

VIII. APPLICABILITY OF PRESUMPTION OF RELIANCE TO EXCHANGE ACT CLAIMS

270. Lead Plaintiff and other members of the Class are entitled to a presumption of reliance under *Affiliated Ute Citizens of Utah v. United States*, 406 U.S. 128 (1972), because the claims asserted herein against the Exchange Act Defendants are predicated in part upon omissions of material fact that such Defendants had a duty to disclose. As more fully alleged above, the Exchange Act Defendants failed to disclose material information regarding STEC's business, financial results and business prospects throughout the Class Period.

271. In the alternative, Lead Plaintiff and other members of the Class are entitled to a presumption of reliance on Defendants' material misrepresentations and omissions pursuant to the fraud-on-the-market doctrine because:

- (a) STEC's common stock was actively traded in an efficient market on NASDAQ during the Class Period;
 - (b) STEC's common stock traded at high weekly volumes during the Class Period;
 - (c) as a regulated issuer, STEC filed periodic public reports with the SEC;
 - (d) during the Class Period, STEC was eligible to file, and did file, registration statements with the SEC on Form S-3;
 - (e) STEC regularly communicated with public investors by means of established market communication mechanisms, including regular dissemination of press releases on the major news wire services and through other wide-ranging public disclosures, such as communications with the financial press, securities analysts and other similar reporting services;
 - (f) the market reacted promptly to public information disseminated by STEC;

1 (g) STEC securities were covered by numerous securities analysts
2 employed by major brokerage firms who wrote reports that were distributed to the
3 sales force and certain customers of their respective firms, and each of these
4 reports was publicly available and entered the public marketplace;

5 (h) the material misrepresentations and omissions alleged herein
6 would tend to induce a reasonable investor to misjudge the value of STEC's
7 securities; and

8 (i) without knowledge of the misrepresented or omitted material
9 facts alleged herein, Lead Plaintiff and other members of the Class purchased
10 STEC securities between the time Defendants misrepresented or failed to disclose
11 material facts and the time the true facts were disclosed.

12 **IX. NO SAFE HARBOR**

13 272. The statutory safe harbor provided for forward-looking statements
14 under certain circumstances does not apply to any of the materially false and
15 misleading statements alleged in this Complaint. The statements alleged to be
16 false and misleading all relate to historical facts or existing conditions and were not
17 identified as forward-looking statements. To the extent that any of the false
18 statements alleged herein may be characterized as forward-looking, they were not
19 adequately identified as "forward-looking" statements when made, and were not
20 accompanied by meaningful cautionary statements adequately tailored to the
21 important factors that caused actual results to differ materially from those in the
22 purportedly "forward-looking" statements. Alternatively, to the extent that the
23 statutory safe harbor would otherwise apply to any statement pleaded herein,
24 Defendants are liable for those materially false forward-looking statements
25 because, at the time each of those forward-looking statements was made, the
26 speaker knew the statement was false or the statement was authorized or approved
27 by an executive officer of STEC who knew that the statement was false.

28

1 **X. CLASS ACTION ALLEGATIONS RELATING TO ALL CLAIMS**

2 273. Lead Plaintiff brings this action on its own behalf and as a class action
3 pursuant to Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure on
4 behalf of all persons who purchased or otherwise acquired STEC common stock
5 between June 16, 2009 and February 23, 2010, inclusive (the “Class Period”), and
6 were damaged thereby (the “Class”).

7 274. Representative Plaintiff Local 103 alleges violations of Section 20A
8 of the Exchange Act on behalf of all Class members who purchased or sold STEC
9 securities contemporaneously with Defendants Manouch and Mark Moshayedi’s
10 purchases and sales of STEC stock during the Class Period. Those Defendants
11 also signed the documents in connection with the Offering, including the
12 Registration Statement on Form S-3 (“Registration Statement”), and the Prospectus
13 contained in the Registration Statement (“Prospectus”). Local 103 purchased
14 shares of STEC common stock contemporaneously, within the meaning of 20A of
15 the Exchange Act, with sales of Defendants Manouch and Mark Moshayedi during
16 the Class Period.

17 275. Representative Plaintiff Norfolk County alleges violations of Sections
18 11, 12(a)(2) and 15 of the Securities Act on behalf of all Class members who
19 acquired shares of STEC common stock pursuant to or traceable to the
20 Registration Statement and/or pursuant to the false Prospectus issued in connection
21 with the Offering. Norfolk County purchased shares of STEC common stock
22 pursuant to or traceable to the Registration Statement and/or pursuant to the false
23 Prospectus issued in connection with the Offering.

24 276. Excluded from the Class are the Defendants; the members of the
25 immediate families of the Officer Defendants and Defendant Bahri; the
26 subsidiaries and affiliates of Defendants; any person who is an officer, director,
27 partner or controlling person of STEC or any other Defendant; any entity in which
28

1 any Defendant has a controlling interest; and the legal representatives, heirs,
2 successors and assigns of any such excluded person or entity.

3 277. The members of the Class are so numerous that joinder of all
4 members is impracticable. As of December 31, 2009, STEC had nearly 50.3
5 million shares of STEC common stock issued and outstanding and actively trading
6 on NASDAQ with the ticker symbol “STEC.” While the exact number of Class
7 members is unknown to Lead Plaintiff at this time and can only be ascertained
8 through appropriate discovery, Lead Plaintiff believes that the members of the
9 proposed Class number in the hundreds or thousands and are geographically
10 widely dispersed. Record owners and other members of the Class may be
11 identified from records maintained by STEC or its transfer agent and may be
12 notified of the pendency of this action by mail, using a form of notice similar to
13 that customarily used in securities class actions.

14 278. There is a well-defined community of interest in the questions of law
15 and fact involved in this case. Questions of law and fact common to the members
16 of the Class which predominate over questions which may affect individual Class
17 members include:

- 18 (a) whether the federal securities laws were violated by
19 Defendants' acts and omissions as alleged herein;
- 20 (b) whether the Registration Statement and Prospectus for the
21 Offering contained material misstatements or omitted to state material
22 information;
- 23 (c) whether the SEC filings, press releases and other public
24 statements made to the investing public during the Class Period contained
25 material misstatements or omitted to state material information;
- 26 (d) whether and to what extent the Company's financial statements
27 were not presented in conformity with GAAP during the Class Period;

(e) whether and to what extent the market price of STEC common stock was artificially inflated during the Class Period because of the material misrepresentations and/or omissions complained of herein;

(f) whether, with respect to Lead Plaintiff's claims for violations of the Securities Act, the Defendants named in those claims can sustain their burden of establishing an affirmative defense pursuant to the applicable statute:

(g) whether, with respect to Lead Plaintiff's claims for violations of the Exchange Act, the Defendants named in those claims acted with the requisite level of scienter;

(h) whether, with respect to Lead Plaintiff's claims pursuant to Section 15 of the Securities Act and Section 20(a) of the Exchange Act, the Defendants named in those claims were controlling persons of STEC;

(i) whether reliance may be presumed pursuant to the fraud-on-the-market doctrine; and

(j) whether the members of the Class have sustained damages as a result of the conduct complained of herein and, if so, the proper measure of damages.

19 279. Lead Plaintiff's claims are typical of those of the Class because Lead
20 Plaintiff and the Class were similarly affected and sustained damages from
21 Defendants' wrongful conduct in violation of the federal securities laws as
22 complained of herein.

23 280. Lead Plaintiff will adequately protect the interests of the Class and
24 have retained counsel who are experienced in class action securities litigation.
25 Lead Plaintiff and the Representative Plaintiffs have no interests which conflict
26 with those of the Class.

27 281. A class action is superior to all other available methods for the fair
28 and efficient adjudication of this controversy because, among other things, joinder

1 of all members of the Class is impracticable. Furthermore, because the damages
2 suffered by individual Class members may be relatively small, the expense and
3 burden of individual litigation make it impossible for members of the Class to
4 individually redress the wrongs done to them. There will be no difficulty in the
5 management of this action as a class action.

6 **XI. EXCHANGE ACT CLAIMS**

7 **COUNT I**

8 **For Violation of Section 10(b) of the Exchange Act**
9 **and Rule 10b-5 Against STEC and The**
10 **Officer Defendants**

11 282. Lead Plaintiff incorporates by reference each and every allegation
12 contained above, as if set forth herein.

13 283. This claim is brought pursuant to Section 10(b) of the Exchange Act
14 and Rule 10b-5 promulgated thereunder, on behalf of Lead Plaintiff and members
15 of the Class against Defendants STEC, Manouch Moshayedi, Mark Moshayedi and
16 Raymond Cook.

17 284. During the Class Period, Defendants STEC, Manouch Moshayedi,
18 Mark Moshayedi and Raymond Cook carried out a plan and course of conduct that
19 was intended to and, throughout the Class Period, did: (i) deceive the investing
20 public regarding STEC's business and operations, and the intrinsic value of STEC
21 common stock; (ii) enable STEC insiders to sell over nine million shares of their
22 privately held STEC common stock while in possession of material adverse non-
23 public information about the Company; and (iii) cause Lead Plaintiff and other
24 members of the Class to purchase STEC common stock at artificially inflated
25 prices. In furtherance of this unlawful plan and course of conduct, the Exchange
26 Act Defendants, jointly and individually (and each of them) took the actions set
27 forth herein.

1 285. Defendants STEC, Manouch Moshayedi, Mark Moshayedi and
2 Raymond Cook: (a) employed devices, schemes, and artifices to defraud; (b) made
3 untrue statements of material fact or omitted to state material facts necessary to
4 make the statements not misleading; and (c) engaged in acts, practices, and a
5 course of business which operated as a fraud and deceit upon the purchasers of the
6 Company's common stock in an effort to maintain artificially high market prices
7 for STEC's common stock in violation of Section 10(b) of the Exchange Act and
8 Rule 10b-5. All Defendants are legally responsible as primary participants in the
9 wrongful and illegal conduct charged herein, and the Officer Defendants are also
10 legally responsible as controlling persons as set forth in Count II below.

11 286. Defendants STEC, Manouch Moshayedi, Mark Moshayedi and
12 Raymond Cook, individually and in concert, directly and indirectly, by the use,
13 means, or instrumentalities of interstate commerce and/or mail, engaged and
14 participated in a continuous course of conduct to conceal adverse material
15 information about the business, operations and future prospects of STEC as
16 specified herein.

17 287. These Defendants employed devices, schemes, and artifices to
18 defraud, while in possession of material adverse non-public information and
19 engaged in acts, practices, and a course of conduct as alleged herein in an effort to
20 assure investors of STEC's value and performance and continued substantial
21 growth, which included the making of, or the participation in the making of, untrue
22 statements of material facts and omitting to state material facts necessary in order
23 to make the statements made about STEC and its business operations and future
24 prospects, in the light of the circumstances under which they were made, not
25 misleading, as set forth more particularly herein, and engaged in transactions,
26 practices, and a course of business which operated as a fraud and deceit upon the
27 purchasers of STEC common stock during the Class Period.
28

1 288. Each of the Officer Defendants' primary liability, and controlling
2 person liability, arises from the following facts: (i) the Officer Defendants were
3 high-level executives and directors at the Company during the Class Period and
4 members of the Company's management team or had control thereof; (ii) each of
5 these Officer Defendants, by virtue of his responsibilities and activities as a senior
6 officer and director of the Company, was privy to and participated in the creation,
7 development and reporting of the Company's internal budgets, plans, projections
8 and/or reports; (iii) each of these Officer Defendants enjoyed significant personal
9 contact and familiarity with the other Officer Defendants and was advised of and
10 had access to other members of the Company's management team, internal reports,
11 and other data and information about the Company's finances, operations, and
12 sales at all relevant times; and (iv) each of these Officer Defendants was aware of
13 the Company's dissemination of information to the investing public which they
14 knew or deliberately disregarded was materially false and misleading.

15 289. The Defendants had actual knowledge of the misrepresentations and
16 omissions of material facts set forth herein, or acted with deliberate disregard for
17 the truth in that they failed to ascertain and to disclose such facts. Such
18 Defendants' material misrepresentations and omissions were done knowingly or
19 with deliberate disregard for the purpose and effect of concealing STEC's
20 operating condition and future business prospects from the investing public and
21 supporting the artificially inflated price of its common stock. As demonstrated by
22 Defendants' overstatements and misstatements of the Company's business,
23 operations, and earnings throughout the Class Period, Defendants, if they did not
24 have actual knowledge of the misrepresentations and omissions alleged, were
25 reckless in failing to obtain such knowledge by recklessly refraining from taking
26 those steps necessary to discover whether those statements were false or
27 misleading.

28

1 290. As a result of the dissemination of the materially false and misleading
2 information and failure to disclose material facts, as set forth above, the market
3 price of STEC common stock was artificially inflated during the Class Period. In
4 ignorance of the fact that market prices of STEC's publicly traded common stock
5 were artificially inflated, and relying directly or indirectly on the false and
6 misleading statements made by Defendants, or upon the integrity of the market in
7 which the securities trade, and/or on the absence of material adverse information
8 that was known to or deliberately disregarded by Defendants but not disclosed in
9 public statements by Defendants during the Class Period, Lead Plaintiff and the
10 other members of the Class acquired STEC common stock during the Class Period
11 at artificially high prices and were damaged thereby.

12 291. At the time of said misrepresentations and omissions, Lead Plaintiff
13 and other members of the Class were ignorant of their falsity, and believed them to
14 be true. Had Lead Plaintiff and the other members of the Class and the
15 marketplace known the truth regarding STEC, which was not disclosed by
16 Defendants, Lead Plaintiff and other members of the Class would not have
17 purchased or otherwise acquired their STEC common stock, or, if they had
18 acquired such common stock during the Class Period, they would not have done so
19 at the artificially inflated prices which they paid.

20 292. By virtue of the foregoing, Defendants have violated Section 10(b) of
21 the Exchange Act, and Rule 10b-5 promulgated thereunder.

22 293. As a direct and proximate result of Defendants' wrongful conduct,
23 Lead Plaintiff and the other members of the Class suffered damages in connection
24 with their respective purchases and sales of the Company's common stock during
25 the Class Period.

COUNT II
For Violation of Section 20(a) of the
Exchange Act Against Manouch Moshayedi,
Mark Moshayedi and Raymond D. Cook

294. Lead Plaintiff repeats and re-alleges each and every allegation contained above as if fully set forth herein.

7 295. Defendants Manouch Moshayedi, Mark Moshayedi and Raymond
8 Cook were controlling persons of STEC within the meaning of Section 20(a) of the
9 Exchange Act as alleged herein. By virtue of their high-level positions, their
10 ownership and contractual rights, participation in and awareness of the Company's
11 operations, and intimate knowledge of the fraudulent scheme and the false
12 financial statements filed by the Company with the SEC and disseminated to the
13 investing public, the Officer Defendants had the power to influence and control,
14 and did influence and control, directly or indirectly, the decision-making of the
15 Company, including the content and dissemination of the various statements that
16 Lead Plaintiff contends are false and misleading. Defendants Manouch
17 Moshayedi, Mark Moshayedi and Raymond Cook were provided with, or had
18 unlimited access to, copies of the Company's reports, press releases, public filings,
19 and other statements alleged by Lead Plaintiff to be misleading prior to and shortly
20 after these statements were issued and had the ability to prevent the issuance of the
21 statements or cause the statements to be corrected.

22 296. In particular, each of these Defendants had direct and supervisory
23 involvement in the day-to-day operations of the Company and, therefore, is
24 presumed to have had the power to control or influence the particular transactions
25 giving rise to the securities violations as alleged herein, and exercised the same.

26 297. As set forth above, STEC and the Officer Defendants each violated
27 Section 10(b) and Rule 10b-5 by their acts and omissions as alleged in this
28 Complaint. By virtue of their positions as controlling persons, the Officer

1 Defendants are liable pursuant to Section 20(a) of the Exchange Act. As a direct
2 and proximate result of STEC's and the Officer Defendants' wrongful conduct,
3 Lead Plaintiff and other members of the Class suffered damages in connection with
4 their purchases of the Company's common stock during the Class Period.

5 **COUNT III**

6 **For Violation of Section 20A of the**
7 **Exchange Act Against Manouch Moshayedi and**
8 **Mark Moshayedi**

9 298. Representative Plaintiff Local 103 repeats and re-alleges each and
10 every allegation contained above as if fully set forth herein.

11 299. This Claim is asserted against Defendants Manouch Moshayedi and
12 Mark Moshayedi, and is brought on behalf of Representative Plaintiff Local 103
13 and Class members who purchased STEC common stock at or about the time that
14 Defendants Manouch Moshayedi and Mark Moshayedi sold STEC common stock
15 at inflated prices during the Class Period.

16 300. On August 11, 2009, while in possession of material, adverse
17 nonpublic information, Defendant Manouch Moshayedi sold 4.1 million shares of
18 STEC common stock, and Defendant Mark Moshayedi sold 4.9 million shares of
19 STEC common stock.

20 301. On August 12, 2009, Representative Plaintiff Local 103 purchased
21 shares of STEC common stock pursuant and traceable to the Offering.

22 302. Defendants Manouch Moshayedi and Mark Moshayedi violated
23 Section 10(b) of the Exchange Act, as described herein.

24 303. As a result of the foregoing, Defendants Manouch Moshayedi and
25 Mark Moshayedi violated Section 20A of the Exchange Act and are liable to
26 Representative Plaintiff Local 103 and other Class members who purchased shares
27 of STEC common stock contemporaneously with these Defendants' insider sales.

1 **XII. FALSE STATEMENTS AND MISLEADING MATERIAL**
2 **OMISSIONS RELATING TO THE SECURITIES ACT CLAIMS,**
3 **AND SUBSTANTIVE ALLEGATIONS REGARDING SAME**

4 304. On August 3, 2010, Defendants announced their intention to conduct
5 the Offering of at least 7.5 million shares of STEC common stock, in addition to
6 1.125 million more shares that they would make available to the Underwriters to
7 cover over-allotments. Also on August 3, 2010, in connection with the Offering,
8 STEC filed with the SEC the Registration Statement, pursuant to Form S-3ASR,
9 and the Prospectus, pursuant to Form 424B3.

10 305. On August 6, 2009, Defendants announced that, pursuant to an
11 amended Prospectus, they had increased the size of the Secondary Offering to nine
12 million shares, in addition to 1.35 million over-subscription shares, and had set the
13 offering price at \$31.00 per share.¹⁵

14 306. As alleged herein, the Registration Statement and Prospectus
15 contained false and misleading statements, and also omitted material information
16 material necessary to make the statements made therein not misleading.

17 **A. Misstatements/Omissions in the Prospectus**

18 **1. Sales to the Other OEMs**

19 307. On August 3, 2009, STEC filed a Form 424B3 (the Prospectus)
20 stating, among other things:

21 We expect continued growth in the sales of our Flash-
22 based SSD ZeusIOPS products though 2009 based on the
23 accelerated adoption of our ZeusIOPS SSDs by most of
24 our major enterprise-storage and enterprise-server OEM
25 customers into their systems.

26

27 ¹⁵ The amended Prospectus, filed on August 7, 2009, is identical to the original
28 Prospectus in all other relevant respects.

1 308. The foregoing statement was a false statement regarding sales to the
2 Other OEMs, and was false for the reasons explained, *supra*, in paragraphs 121-46.

3 **2. Sales to IBM**

4 309. The statement quoted, *supra*, in paragraph 307, also contained
5 misleading material omissions concerning IBM, as explained, *supra*, in paragraphs
6 139-41, 146, 160-68.

7 **3. The EMC Agreement**

8 310. The passage quoted, *supra*, in paragraph 307, also was part of the
9 following, longer passage:

10 We expect continued growth in the sales of our Flash-
11 based SSD ZeusIOPS products though 2009 based on the
12 accelerated adoption of our ZeusIOPS SSDs by most of
13 our major enterprise-storage and enterprise-server OEM
14 customers into their systems. As part of this expected
15 growth, on July 16, 2009 we announced an agreement
16 with one of our largest enterprise-storage customers for
17 sales of \$120 million of ZeusIOPS SSDs to be delivered
18 in the second half of 2009.

19 311. The foregoing passage was a false statement and/or misleading
20 material omission regarding EMC, and was false and/or contained a misleading
21 material omission for the reasons explained, *supra*, in paragraphs 66-86. *See also*
22 ¶¶ 45-65.

23 **B. Misstatements/Omissions in STEC's 2009 Second Quarter 10-Q,**
24 **Incorporated by Reference into the Registration Statement and**
25 **Prospectus**

26 312. On August 3, 2009, STEC filed its 2009 second quarter 10-Q, which
27 was incorporated by reference into the Registration Statement and Prospectus.

1 **1. Omission to File the EMC Agreement with the 10-Q**

2 313. Item 601(b)(10) of Reg. S-K (17 C.F.R. § 229.601(b)(10)) requires
3 filing with a 10-Q “[e]very contract not made in the ordinary course of business
4 which is material to the registrant and is to be performed in whole or in part at or
5 after the filing of the [10-Q] or was entered into not more than two years before
6 such filing.”

7 314. The same filing requirement applies to “[a]ny contract upon which the
8 registrant’s business is substantially dependent.”

9 315. The EMC Agreement was a “one-off” contract not made in the
10 ordinary course of STEC’s business, executed during STEC’s 2009 second quarter,
11 and to be performed after the filing of STEC’s 2009 second quarter 10-Q.

12 316. STEC’s business was substantially dependent on the EMC
13 Agreement, as shown by the collapse of STEC’s revenues in the quarter following
14 the end of the Agreement.

15 317. Defendants omitted to file the EMC Agreement with STEC’s 2009
16 second quarter 10-Q—or at any time thereafter—thereby violating Reg. S-K.

17 318. As a matter of law, every violation of Reg. S-K is presumed to be a
18 material violation of Section 11.

19 319. Additionally, Defendants’ failure to file the EMC Agreement with
20 STEC’s 2009 second quarter 10-Q communicated to investors that the EMC
21 Agreement was made in the ordinary course of STEC’s business. For the reasons
22 explained, *supra*, in paragraphs 66-68, 232-37 and 251-55, this communication
23 was materially misleading.

24 320. Defendants’ failure to file the EMC Agreement with STEC’s 2009
25 second quarter 10-Q also communicated to investors that STEC’s business was not
26 substantially dependent on the Agreement. For the reasons explained, *supra*, in
27 paragraphs 199-200, 251-5 and 262-64, this communication also was materially
28 misleading.

1 **2. Omission to Explain in the MD&A Section That the EMC**
2 **Contract Was a One-Off Contract**

3 321. As established by Item 303(b) of Reg. S-K, Item 303 sets forth the
4 requirements for “management’s discussion and analysis of financial condition and
5 results of operations” in Forms 10-Q.

6 322. Item 303(a)(3)(ii) of Reg. S-K requires the registrant to “describe any
7 known trends or uncertainties that have had or that the registrant reasonably
8 expects will have a material favorable or unfavorable impact on sales or revenues
9 or income from continuing operations.”

10 323. The 10-Q contains the exact same language that appeared in the
11 Prospectus, quoted in paragraph 310, *supra*. For the reasons explained in
12 paragraphs 73-86, *supra*, this statement communicated, among other things, that
13 the EMC Agreement established a new trend in the level of the recurring volume
14 of purchases by EMC. *See also ¶¶ 45-71.* Therefore, STEC was required by Item
15 303 to disclose in the MD&A that, going forward, EMC was not expected to make
16 a similar volume of purchases every six months. STEC’s omission to make any
17 such disclosure in the MD&A violated Reg. S-K and is a material omission under
18 the Securities Act.

19 **3. 2009 Second Quarter Revenue**

20 324. The second quarter 10-Q reported revenue of \$86.4 million for the
21 second quarter. This statement of reported revenue was false and contained
22 misleading material omissions, for the reasons explained, *supra*, in paragraphs
23 190-203.

24 **XIII. SECURITIES ACT CLAIMS**

25 325. Counts IV to VI are not based on and do not sound in fraud. Any
26 allegations of fraud or fraudulent conduct are specifically excluded from these
27 Counts. For purposes of asserting these claims under the Securities Act,
28 Representative Plaintiff Norfolk County does not allege that Defendants acted with

1 scienter or fraudulent intent. Representative Plaintiff Norfolk County expressly
2 excludes and disclaims any allegation that could be construed as alleging fraud or
3 intentional or reckless misconduct.

4 **COUNT IV**

5 **For Violation Of Section 11 of the Securities**

6 **Act Against the Officer Defendants, Bahri and STEC**

7 326. Representative Plaintiff Norfolk County incorporates by reference
8 each and every allegation contained in Sections I-V, IX-X and XII above, as if set
9 forth herein, only to the extent, however, that such allegations do not allege fraud,
10 scienter, or the intent of any Defendant named in this Count to defraud
11 Representative Plaintiff Norfolk County or other members of the Class. This
12 Count is asserted by Representative Plaintiff Norfolk County against the Officer
13 Defendants, Defendant Bahri and STEC by and on behalf of persons who acquired
14 shares of STEC common stock pursuant or traceable to the false Registration
15 Statement issued in connection with the Offering, and predicted upon the liability
16 of the Defendants named in this count for making false and materially misleading
17 statements and omissions therein.

18 327. STEC was the registrant of the Offering and the issuer of the stock
19 issued via the false Registration Statement. As such, STEC is strictly liable for
20 each false and misleading statement contained therein.

21 328. The Officer Defendants and Defendant Bahri are each signatories of
22 the Registration Statement, therefore, each of these Defendants had a duty to make
23 a reasonable investigation of the statements contained in the Registration
24 Statement and Prospectus to ensure that said statements were true and that there
25 was no omission to state any material fact required to be stated in order to make
26 the statements contained therein not misleading. In the exercise of reasonable care,
27 the Officer Defendants and Bahri should have known of the material misstatements
28 and omissions contained in the Registration Statement and Prospectus and also

1 should have known of the omissions of material fact necessary to make the
2 statements made therein not misleading. As such, each of these Defendants is
3 liable to plaintiff and the Class.

4 329. Each of the Defendants named in this Count caused to be issued and
5 participated in the issuance of materially false and misleading written statements to
6 the investing public that were contained in the Registration Statement, which
7 misrepresented or failed to disclose, *inter alia*, the facts set forth above. Each of
8 these Defendants owed to the purchasers of the shares issued in the Offering the
9 duty to conduct a reasonable and diligent investigation of the statements contained
10 in the Registration Statement for the Offering, and any incorporated documents, at
11 the time it became effective to ensure that such statements were true and that there
12 were no omissions of material fact that rendered them materially misleading. Each
13 of these Defendants did not conduct a reasonable investigation or possess
14 reasonable grounds to believe that the statements contained in the Registration
15 Statement were true, without omissions of any material facts, and were not
16 misleading.

17 330. By reasons of the conduct alleged herein, each of the Defendants
18 named in this Count violated, and/or controlled a person who violated Section 11
19 of the Securities Act. As a direct and proximate result of these Defendants'
20 wrongful conduct, the price for the STEC common stock sold in the Offering was
21 artificially inflated and Representative Plaintiff Norfolk County and the Class
22 suffered substantial damages in connection with their purchase of STEC common
23 stock.

24 331. Representative Plaintiff Norfolk County and other members of the
25 Class who acquired their STEC stock in the Offering did not know and, in the
26 exercise of reasonable diligence could not have known, of the untruths and
27 omissions contained or incorporated by reference in the Registration Statement.
28 The value of the shares sold in the Offering has declined substantially due to

1 violations of Section 11 of the Securities Act by the Defendants named in this
2 Count. Representative Plaintiff Norfolk County and the other members of the
3 Class were thus damaged by these Defendants' misconduct and by the material
4 misstatements and omissions of the Registration Statement.

5 332. By reason of the foregoing, the Defendants named in this Count are
6 liable for violations of Section 11 of the Securities Act to Representative Plaintiff
7 Norfolk County and all members of the Class who purchased or otherwise acquired
8 shares of STEC common stock pursuant or traceable to the Offering.

9 333. This action was brought within one year after the discovery of the
10 untrue statements and omissions and within three years after the Offering.

11 **COUNT V**

12 **For Violation of Section 11 of the Securities Act**

13 **Against the Underwriter Defendants**

14 334. Representative Plaintiff Norfolk County incorporates by reference
15 each and every allegation contained in Sections I-V, IX-X and XII above, as if set
16 forth herein, only to the extent, however, that such allegations do not allege fraud,
17 scienter, or the intent of any Underwriter Defendant to defraud Representative
18 Plaintiff Norfolk County or other members of the Class. No allegation is made
19 herein that any Underwriter Defendant knew or was reckless in failing to know that
20 any of the alleged false statements or misleading material omissions was false or
21 misleading.

22 335. This Count is asserted by Representative Plaintiff Norfolk County
23 against the Underwriter Defendants by and on behalf of persons who acquired
24 shares of STEC common stock pursuant or traceable to the false Registration
25 Statement issued in connection with the Offering, and predicated upon the
26 Underwriter Defendants' negligence for making false and materially misleading
27 statements and omissions therein.

1 336. Each of the Underwriter Defendants was responsible for the contents
2 and dissemination of the Registration Statement for the Offering. Each of the
3 Underwriter Defendants acted negligently and is liable to Representative Plaintiff
4 Norfolk County and all other persons who purchased or otherwise acquired STEC
5 common stock pursuant or traceable to the Offering. Each of the Underwriter
6 Defendants caused to be issued and participated in the issuance of materially false
7 and misleading written statements to the investing public that were contained in the
8 Registration Statement, which misrepresented or failed to disclose, *inter alia*, the
9 facts set forth above. Each of the Underwriter Defendants owed to the purchasers
10 of the shares issued in the Offering the duty to conduct a reasonable and diligent
11 investigation of the statements contained in the Registration Statement for the
12 Offering, and any incorporated documents, at the time it became effective to
13 ensure that such statements were true and that there were no omissions of material
14 fact that rendered them materially misleading. Each of the Underwriter
15 Defendants did not conduct a reasonable investigation or possess reasonable
16 grounds to believe that the statements contained in the Registration Statement were
17 true, without omissions of any material facts, and were not misleading.

18 337. By reasons of the conduct alleged herein, each Underwriter Defendant
19 violated, and/or controlled a person who violated Section 11 of the Securities Act.
20 As a direct and proximate result of the Underwriter Defendants' wrongful conduct,
21 the price for the STEC common stock sold in the Offering was artificially inflated
22 and Representative Plaintiff Norfolk County and the Class suffered substantial
23 damages in connection with their purchase of STEC common stock.

24 338. Representative Plaintiff Norfolk County and other members of the
25 Class who acquired their STEC stock in the Offering did not know and, in the
26 exercise of reasonable diligence could not have known, of the untruths and
27 omissions contained or incorporated by reference in the Registration Statement.
28 The value of the shares sold in the Offering has declined substantially due to